UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

HISHI PLASTICS, U.S.A., INC.[1]

Employer

and Case 22-RC-12310

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE), LOCAL 404[2]

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,[3] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[1] The Employer's name appears as amended at the hearing.
[2] The Petitioner's name appears as amended at the hearing.
[3] Briefs submitted by the parties have been duly considered. Despite the Employer's assertion that the Petitioner did not serve its brief on the Employer in precisely the same manner as Petitioner served it on the Region, as provided in NLRB Rules and Regulations §102.114(a), I find that pursuant to §102.114(b) the Employer was not prejudiced by this later service of Petitioner's brief.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[4]

3. The labor organization involved claims to represent certain employers of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

> All production and maintenance workers employed by the Employer at it Lincoln Park, New Jersey facility, but excluding all clerical, confidential and professional employees, guards and supervisors as defined in the Act.[5]

ISSUES AND CONCLUSIONS

The Employer raised two contentions at the hearing: (1) six individuals are supervisors as defined in the Act; and (2) employees in quality control areas comprise a unit separate from that of the production and maintenance employees. The Petitioner contends that the six individuals are not supervisors and that one overall

[4] The unit found to be appropriate is that petitioned for by the Union, with the exclusion of guards, as amended at hearing.

[5] The Employer manufactures PVC shrink tubing and sleeves at its Lincoln Park, New Jersey facility, where it employs approximately 45 employees, none of whom come to the job with any specialized skills or training. The Employer has a mainstay of 20 customers who supply 80% of its base, a number of whom are drug companies. The product it manufactures is used for bottle neck bands, battery sleeves for 9 volt batteries and capacitator sleevings. Making its product involves the mixing of PVC compound with pigments and stabilizers. The mixed compound goes through an extrusion process where it is made to customer specification. From there it goes into either roll form or directly to printing and then from printing to cutting, or it can be sold as a unit. Ultimately, it moves on to quality control where it is inspected to make sure it meets customer specification before being packed and shipped.

unit is appropriate. For reasons to be discussed *infra,* I find that the six employees denoted as supervisors by the Employer do not meet the supervisory standard enunciated by the Board and are therefore not supervisors within the meaning of the Act and should be included in the unit.[6] I also find, contrary to the Employer's assertion, that there is a sufficient community of interest between the production and maintenance employees and the quality control employees to constitute one overall unit and that the quality control employees are properly included in the unit.

A. The Supervisory Issue:

The Employer asserts that the first shift, second shift, third shift, printing, warehouse and quality control supervisors should be excluded from the unit as supervisors.

Section 2(11) of the Act defines the term "supervisor" as:

> any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, and discharge assign reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well established that an individual need possess only one of the enumerated indicia of authority in order to be encompassed by the definition, as long as the exercise of such authority is carried out in the interest of the employer and requires the exercise of independent judgment. *Big Rivers Electric Corp.,* 266 NLRB

[6] The six employees are: John Vigh, first shift supervisor; Andrew Monaco, second shift supervisor; Manuel Torres, third shift supervisor; Dan Yates, printing supervisor; Paul Bloomfield, warehouse supervisor; and Geoff Neumaier, quality control supervisor.

380, 382 (1993). Absent detailed evidence of independent judgment, mere inferences or conclusionary statements without supporting evidence are insufficient to establish supervisory status. *Quadrex Environmental Co.,* 308 NLRB 101 (1992); *Sears Roebuck & Co.,* 304 NLRB 193 (1991). The Board takes care not to construe supervisory status too broadly, because the employee who is deemed a supervisor loses the protection of the Act. *St. Francis Medical Center-West,* 323 NLRB 1046 (1997). The burden of establishing supervisory status is upon the party asserting that status. *NLRB v. Kentucky River Community Care, Inc.,* 532 U.S. 706, 710 (2001); *Benchmark Mechanical Contractors, Inc.,* 327 NLRB 829 (1999); *Alois Box Co., Inc.,* 326 NLRB 1177 (1998). Whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established. *Phelps Medical Center,* 295 NLRB 486, 490-91 (1989).

The Employer contends, through the testimony of its witness Comptroller William D'Addato and its Exhibits 1-36, that the six individuals noted *supra* are supervisors because they can effectively recommend hiring, firing, assigning, discipling and rewarding employees, and because they responsibly direct the work force. There is no record evidence that the six alleged supervisors transfer, layoff or recall employees.

Turning to the first supervisory indication, the ability to hire or fire employees or to effectively recommend such action, the Employer contends that its testimonial and documentary evidence establishes that supervisors have the ability to hire and fire

employees. In support of its assertion that supervisors can hire, it cited instances in which individuals recommended by supervisors Manuel Torres and Paul Bloomfield were hired. However, two other supervisors, John Vigh and Dan Yates, called by the Petitioner, both testified that they had never been instructed by the Employer that they had the ability to hire or fire any employee or to effectively recommend such action, nor had they ever hired or fired.

The Employer maintains a recruitment bonus program that provides for a $250 payment to any employee who recommends an applicant who is subsequently hired. Record testimony reveals that both supervisors and employees participate in it. There is no evidence that supervisory "recommendations" under this program are taken any more seriously than those of non-supervisory employees. Moreover, D'Addato acknowledged that Production Manager Bruce Gerritson is responsible for the Employer's hiring.

The Employer contends that supervisors have the ability to fire and cited the dismissal of Brian Underall. Underall was a short term employee who worked for a matter of weeks before he was insubordinate to Paul Bloomfield. Bloomfield wanted Underall terminated immediately for his insubordination. However, I note that Underall was terminated only after several meetings with Bloomfield and Production Manager Bruce Gerritson and only after Gerritson and Plant Manager Brian Keenan had satisfied themselves that termination was the appropriate course to take. Thus, while Bloomfield may have recommended dismissal, he had no independent ability to

effectively recommend it and Underall's termination followed only after independent review by Gerritson and Keenan.

The Employer claims that on a daily basis, its supervisors have the ability to assign employees work by determining which lines to run and which employees will run them. Nonetheless, the record reveals that work assignments and direction are routine. Both Vigh and Yeats testified that they spend 75-80% of their time doing production work. They work for an hourly wage that is not much higher than that of the people they supervise and their benefits and working conditions are the same. The employees' work is scheduled by a customer service employee, after consultations with customers, and then passed on to the supervisor. While supervisors have some flexibility to switch an employee from one line to another, more significant actions, like shutting down a line, are decided by the Production Manager.

The Employer next relies on the employees' performance evaluations to support its assertion that supervisors have the ability to reward employees. However, the evidence indicates that while supervisors complete a portion of employees' evaluation forms, they do so in consultation with management, not independently. Nor is there any evidence that the evaluations affect wages or benefits. To the contrary, John Vigh testified that although he wrote favorable comments on an employee's evaluation form and lobbied for an increase for the employee, his efforts were ignored.

As to disciplining employees, there are documents that the Employer contends show that supervisors have issued disciplinary notices to employees [Employer Exhibits 5, 6, 7 and 8]. Those disciplinary notices described a variety of infractions from improperly tightening bolts to taking extended lunch and break times and are signed by several different supervisors, among them Dan Yates and Andrew Monaco. However, Dan Yates testified that the disciplinary notice he gave, cited as Employer's Exhibit 5, was given at the behest of management, not independently. Further, the record is silent as to how these disciplinary notices affected wages and benefits accorded to employees.

B. Supervisory Conclusion.

As noted *supra,* the supervisors in question spend 75-80% of their time doing unit work, they work for an hourly wage that is not much higher than that of the people they supervise, their benefits and working conditions are the same, and they report to the same overall supervisors, with the exception of the quality control area, which well be addressed *infra.* In the instant case, I find that Petitioner has not met its burden of establishing that the six individuals are statutory supervisors. Although they may perform minor, routine "supervisory" responsibilities, such is not determinative of their supervisory status. *Bakersfield Californian*, 316 NLRB 1211 (1995); *Connecticut Light & Power Co*., 121 NLRB 768, 770 (1958). Rather, the question is whether there is evidence that the individuals actually possess any of the powers enumerated in Section 2(11). *Western Union Telegraph Co*., 242 NLRB 825 at 826 (1979); *Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976). There is

no evidence that they have the authority to hire, fire, suspend, recall, promote, reward, discipline or adjust the grievances of any employees or to recommend such action, or that they have done so. *Elmhurst Extended Care Facilities, Inc.,* 329 NLRB 55 (1999); *Quality Chem., Inc.,* 324 NLRB 328, 330 (1997); *Waverly-Cedar Falls Health Care, Inc.,* 297 NLRB 390 (1989).

Nor is there evidence that these individuals responsibly direct employees under them. The employees generally work independently while occasionally seeking guidance or advice. There is no showing that the six individuals perform any function that involves the exercise of independent judgment, which would be necessary for that function to be considered an indicium of supervisory status. *Tree-Free Fiber Co.,* 328 NLRB 389, 392 (1999); *Chrome Deposit Corp.,* 323 NLRB 961, 964 (1997). The degree of supervisory function exercised by these "supervisors" amounts to no more than a "routine, clerical, perfunctory or sporadic exercise" and thus could not confer supervisory status as defined by the Act.[7] *Chicago Metallic Corp.,* 273 NLRB 1677, 1689 (1985); *Biewer Wisconsin Saw Mill,* 312 NLRB 506 (l998). Further, although there is evidence that they contribute comments to annual evaluations for employees, there is no evidence as to what impact those comments have on the employees' job status or whether personnel decisions are directly affected by them. In the absence of such evidence, there is insufficient evidence to establish supervisory authority. *Northern Montana Health Care Center,* 324 NLRB 752, 753,

[7] The Employer also asserts that the supervisors fill out accident reports, which are then forwarded to OSHA and to the Employer's insurance carrier, and make notations on time cards. These are, at best, secondary indicia of supervisory status. I also note that there is record evidence that unit employees have also filled out these forms and that "call outs," when employees may be absent or late, can be taken by any employee.

n. 11 (1997). Additionally, these individuals do not fill in for management when management is absent; when they themselves are absent, leadmen fill in for them.

Based on the record testimony, I find that the six employees denoted by the Employer as supervisors do not possess sufficient supervisory indicia to qualify them as such under the Act and I further find that they should be included in the petitioned for production and maintenance unit.

C. Quality Control Issue.

There are four employees and one supervisor in the quality control area. The Employer asserts there is an inherent conflict of interest between production employees and those doing quality control work because the quality control employees identify product that is inadequate and performance that is faulty, in effect, according to D'Addato, "tattling" on their co-workers. Nor, the Employer asserts, is there a sufficient community of interest to allow these two separate groupings of employees to be melded into a single unit as they lack functional integration and interchange with production and maintenance employees, have different hours of work and have participated in a bonus program that has been discontinued. Moreover, the supervisory lines have been established differently to maintain this separation of function. I do not find those assertions persuasive.

The record reveals that the quality control supervisor reports to Plant Manager Brian Keenan while the five production supervisors report to Production Manager Bruce Gerritson. Gerritson also reports to Keenan, who in turn reports to the President. This is little difference in the wage rate paid to production employees as

opposed to quality control employees, although quality control employees tend to be at the lower end of the wage spectrum. Quality control employees work a 40 hour week as opposed to the 38.5 hour week of production and maintenance employees. All the employees share the same benefits, same cafeteria, same washroom and, ultimately, the same supervision. Quality control employees work on the production floor at least half the time, inspecting what is being produced, packed and shipped. They use the same measuring devices as production employees, since both groups are constantly testing product, indicating significant interchange and integration. Like production employees, no prior skill level or training is required for the job. Thus, when an opening in production occurs, quality control employees are likely to fill it. Plant Manager Brian Keenan acknowledged on cross examination that quality control employees are reporters of fact, not purveyors of discipline.

D. Quality Control Conclusion.

The Board has generally included quality control employees in production and maintenance units where a union has requested them, determining that their placement in the same unit does not create a conflict. *Blue Grass Industries,* 287 NLRB 274 (1987); *W. Grace & Co.,* 202 NLRB 788 (1973). In *Beatrice Foods,* 222 NLRB 883 (1976), by contrast, the Board excluded quality control employees from the unit despite the petitioner's contention that they should be included. The Board held there that since they were separately supervised and separately located and had no regular contact with production employees, the quality control employees did not share a sufficient community of interest with unit employees to warrant their inclusion in the unit. Such is not the case here. There is frequent, daily contact between the production and

maintenance employees and the quality control employees, who use the same instruments to measure the same products in the same place. They are subject to the same work environment, under the same conditions, and share a lunch room and other facilities inimical to the workplace. Accordingly, I find that they share a sufficient comment of interest with the production and mainteance employees and I shall include them in one plant wide production and maintenance unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less that 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in n economic strike which commenced more than 12 months before the election and who have been permanently replaced.

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Electrical, Radio and Machine Workers of America (UE), Local 404.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company,* 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, three (3) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility,* 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB, Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102, on or before April 2, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington,

D.C. 20570-0001. This request must be received by the Board in Washington by April 10, 2003.

Signed at Newark, New Jersey this 27th day of March, 2003.

Gary T. Kendellen
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